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CITATIONS

667179—45

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 394

MAE HUFFMAN, PETITIONER

v.

HOME OWNERS' LOAN CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE HOME OWNER'S LOAN CORPORATION IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 81–87) is reported at 150 F. 2d 162. The memorandum opinion of the District Court (R. 21–26) has not been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 27, 1945 (R. 87–88), and a petition for rehearing (R. 89–102) was denied on July 23, 1945 (R. 103). The petition for a writ of certiorari was filed September 1, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Circuit Court of Appeals correctly applied the law of Missouri in affirming the judgment of the District Court in favor of respondent, in the light of the decision of the Supreme Court of Missouri in *Bartlett* v. *Taylor*, 174 S. W. 2d 844, which intervened between a previous decision of the Circuit Court of Appeals in favor of respondent and the present decision in the same case.

STATEMENT

The petitioner, a citizen of Missouri, brought this action in the District Court for the Western District of Missouri against the respondent, a corporation wholly owned by the Government, to recover damages for personal injury alleged to have resulted from respondent's negligence. A judgment in favor of petitioner was reversed by the Circuit Court of Appeals for the Eighth Circuit in *Home Owners' Loan Corporation* v. *Huffman*, 124 F. 2d 684, and a writ of certiorari to review that decision was denied by this Court, 316 U. S. 681. A new trial was had in the District Court, resulting in a judgment in favor of respondent (R. 27–28) which was affirmed upon appeal (R. 88).

The facts which were developed at the second trial do not differ from those which appeared at the first trial (R. 22, 82, 87). Briefly, they are as follows.

Petitioner's injury resulted from a fall upon the basement stairway of premises leased by respondent

to petitioner's employer (R. 22, 56), caused by the tipping of the fourth tread from the top of the stairway. The tread was split longitudinally, as it had been since long before the lease transaction, and was defectively fastened to the "stringer" below (R. 27. Before petitioner's employer entered into possession of the premises, respondent made certain repairs, including repairs to a landing near the bottom of the same stairway. No repairs were made to any other part of the stairway. (R. 22, 70). Respondent did not construct the building in which the injury occurred, but acquired it through foreclosure (R. 22).

The Circuit Court of Appeals on both appeals purported to follow the law of Missouri to the effect that a landlord is not liable in tort for injuries to a tenant or the licensee of a tenant, resulting from defects in leased premises, unless he undertook to make repairs and the injury resulted from his failure to exercise ordinary care in making them (124 F. 2d at 686; R. 85). Upon the second appeal the court also declined to reverse the trial court's determination that respondent Home Owners' Loan Corporation was not chargeable with discovery and concealment of the defect in the stair tread which led to petitioner's injury (R. 87).

Between the decision of the Circuit Court of Appeals upon the first appeal and its decision upon the second appeal, the Supreme Court of Missouri in *Bartlett* v. *Taylor*, 174 S. W. 2d 844, overruled statements in the opinions in *Davis* v. *Cities Service Oil Co.* (Mo. App.), 131 S. W. 2d 865, and *Logsdon*

v. *Central Development Assn.*, 233 Mo. App. 499, 123 S. W. 2d 631, that a landlord is liable for injury resulting from repairs which he has undertaken only if the repairs made the premises more dangerous than they were before, concluding instead that the plaintiff's case is made out when it appears that the repairs left a dangerous condition resulting from negligence in making them (174 S. W. 2d at 849). *Davis* v. *Cities Service Oil Co.* and *Logsdon* v. *Central Development Assn.* were cited by the court below in its opinion upon the previous appeal. (124 F. 2d at 686, 687.)

ARGUMENT

No question has been raised as to whether the law of Missouri governs this case. The courts below have assumed that it does and have sought to apply it. No question of refusal to follow applicable state law is involved.

The questions presented by the petition (pp. 22–24) are substantially the same as those presented by the previous petition (No. 1110, October Term, 1941, pet. 17–19), except that the petitioner now challenges in addition the ruling of the court below (R. 85–87) declining to reverse the trial court's conclusion with respect to respondent's alleged concealment of the defect which led to petitioner's injury (see *supra*, p. 3). We think it is evident that the additional question (pet. 22–23) does not involve an important question of Federal law but relates solely to the appraisal of evidence contained in the record. Accordingly, unless the court's treat-

ment of the intervening Missouri Supreme Court decision, allegedly changing the applicable law of that State, raises an important question, there is no basis for a writ of certiorari to issue.

Both the District Court (R. 24–25) and the Circuit Court of Appeals (R. 83–84) concluded that *Bartlett* v. *Taylor*, *supra*, did not change the law of Missouri in a pertinent respect or render that law out of accord with the proposition relied upon by the Circuit Court of Appeals upon the first appeal, "that under the decisions in Missouri, a tort action can only be sustained against the defendant landlord who actually makes a repair and as a result of his negligence in so doing injury results" (R. 83; 124 F. 2d at 687). Petitioner's right of recovery has not been denied on either appeal for failure to show that the repairs made by respondent increased the hazard which caused petitioner's fall. The elimination from the law of Missouri of a doubtful proposition (cf. *Bartlett* v. *Taylor*, *supra*) that at no time has affected this case, which might have required a showing of increased danger if it had been applied, obviously does not now require a review of Missouri law by this Court.

The authorities which establish that the state law was correctly applied in the Circuit Court of Appeals are cited in the opinions of that court and are reviewed in the brief in opposition to the previous petition for certiorari (No. 1110, October Term, 1941, br. in opp. 7–9). No useful purpose would be served by

reviewing those authorities here. Their effect upon this case has not been changed by *Bartlett* v. *Taylor*.

This litigation has been long protracted. No question requiring review by this Court, and no significant new question whatever, is presented by the petition. We respectfully submit that the cause should now be terminated.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

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SEPTEMBER 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1945